

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
8

9
10 RAYMOND ALFORD BRADFORD,
11 Plaintiff,
12 v.
13 GIAN HERNANDEZ, ET AL.,
14 Defendant(s).
15

Case No. CV 18-7268-SVW (KK)

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

16
17 I.

18 **INTRODUCTION**

19 Raymond Alford Bradford (“Plaintiff”), proceeding pro se and in forma
20 pauperis, filed a Complaint pursuant to 42 U.S.C. § 1983 (“Section 1983”) against
21 defendants Gian Hernandez, J. Bennett, and Kay in their individual and official
22 capacities (“Defendants”). Plaintiff alleges Defendants were deliberately indifferent to
23 his serious medical needs in violation of the Eighth Amendment, acted with gross
24 negligence, performed medical malpractice, and committed fraud. For the reasons
25 discussed below, the Court dismisses the Complaint with leave to amend.

26 ///

27 ///

28 ///

1 II.

2 **PROCEDURAL HISTORY**

3 On July 26, 2018, Plaintiff, who is currently incarcerated at the California State
4 Prison in Lancaster, constructively filed¹ a civil rights complaint (“Complaint”). ECF
5 Docket No. (“Dkt.”) 1.

6 The allegations in the Complaint concern the medical treatment Plaintiff
7 received following an alleged incident on May 17, 2018 in which guards at Donovan
8 Correctional Facility in San Diego attacked Plaintiff. Dkt. 1 at 4. Plaintiff asserts that
9 following the incident and after he submitted medical appeals, “Defendant Gian
10 Hernandez[, who works as a physician at the California State Prison in Lancaster,]
11 retaliated by discontinuing Plaintiff’s life sustaining blood thinner (injections) and pain
12 medication [as a way of] punishing plaintiff for complaining about chest pain,
13 Atelectasis, a partially or completely collapsed lung, left lower-lobe pneumonia, [a]
14 head injury, [a] spinal cord injury, and [a] right mid-finger fracture”. Id.² Plaintiff
15 alleges that since May 18, 2018, “Defendant Gian Hernandez has deliberately denied,
16 delayed, interfered with treatment and has repeatedly lied about Plaintiff’s injuries . . .
17 to undermine Plaintiff’s claim that he received injuries on May 17, 2018 at (RJD)
18 Donovan Correctional Facility after being attacked by guards.” Id.

19 Similarly, Plaintiff alleges that on June 6, 2018, Defendant J. Bennett, who
20 works as a physician at Palmdale Regional Medical Center, ordered an X-ray of
21 Plaintiff’s chest and lab work. Dkt. 1 at 5. Plaintiff contends that when he “told
22

23 ¹ Under the “mailbox rule,” when a pro se inmate gives prison authorities a
24 pleading to mail to court, the court deems the pleading constructively “filed” on the
25 date it is signed. Roberts v. Marshall, 627 F.3d 768, 770 n.1 (9th Cir. 2010); Douglas
26 v. Noelle, 567 F.3d 1103, 1107 (9th Cir. 2009) (stating the “mailbox rule applies to §
27 1983 suits filed by pro se prisoners”). Here, however, Plaintiff neither signed nor
28 dated the Complaint. In fact, the signature page of the Complaint appears to be
missing. However, Plaintiff signed his Motion to Proceed In Forma Pauperis, which
was dated July 26, 2018. Dkt. 2. Thus, the Court deems July 26, 2018 the
constructive filing date without prejudice.

² To the extent Plaintiff seeks to assert a First Amendment retaliation claim
against Defendants, he must properly present such claim in an amended complaint.

1 [Bennett] that the guards were the cause of [Plaintiff's] injuries", Defendant Bennett
2 informed Plaintiff "that all test[s] were normal" and "deliberately den[ied], delay[ed],
3 interfer[ed] with treatment and l[ie]d [about Plaintiff's medical] test results." Id. at 5.

4 Lastly, Plaintiff alleges that since mid-June 2018, "Defendant Kay[, who works
5 as a physician at the California State Prison in Lancaster,] refused to answer any
6 questions Plaintiff had regarding [Plaintiff's] x-ray results and treatment after Plaintiff
7 told Defendant Kay [Plaintiff] had been attacked and framed [by prison guards.]"
8 Dkt. 1 at 6. Plaintiff asserts that Defendant Kay "knew plaintiff has chest pain,
9 Atelectasis, a partially or completely collapsed lung, [a] spinal cord injury, [a] head
10 injury, [a] right mid finger [injury], and left lower lobe pneumonia" but "was upset and
11 retaliated by deliberately denying, delaying, interfering with treatment and has
12 repeatedly lied to Plaintiff's face in order to undermine the seriousness of [Plaintiff's]
13 injuries." Id. at 6.

14 Plaintiff asserts Defendants in their individual and official capacities violated
15 the Eighth Amendment, acted with gross negligence, performed medical malpractice,
16 and committed fraud. Id. at 6-18.

17 Plaintiff contends he has not exhausted his administrative remedies but that his
18 remedies are unavailable to him because "the appeals coordinator [failed] to process
19 Plaintiff's emergency medical appeals for treatment for his collapsed lung as well as
20 other injuries because the guards are responsible." Id. at 17.

21 The Complaint does not include a demand for relief. See Dkt. 1.

22 III.

23 STANDARD OF REVIEW

24 As Plaintiff is proceeding in forma pauperis, the Court must screen the
25 Complaint and is required to dismiss the case at any time if it concludes the action is
26 frivolous or malicious, fails to state a claim on which relief may be granted, or seeks
27 monetary relief against a defendant who is immune from such relief. 28 U.S.C. §
28 1915(e)(2)(B); see Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998).

1 Under Federal Rule of Civil Procedure Rule 8(a), a complaint must contain a
2 “short and plain statement of the claim showing that the pleader is entitled to relief.”
3 Fed. R. Civ. P. 8(a)(2). In determining whether a complaint fails to state a claim for
4 screening purposes, the Court applies the same pleading standard as it would when
5 evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). See
6 Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012).

7 A complaint may be dismissed for failure to state a claim “where there is no
8 cognizable legal theory or an absence of sufficient facts alleged to support a
9 cognizable legal theory.” Zamani v. Carnes, 491 F.3d 990, 996 (9th Cir. 2007). In
10 considering whether a complaint states a claim, a court must accept as true all of the
11 material factual allegations in it. Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir.
12 2011). However, the court need not accept as true “allegations that are merely
13 conclusory, unwarranted deductions of fact, or unreasonable inferences.” In re
14 Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008). Although a complaint
15 need not include detailed factual allegations, it “must contain sufficient factual matter,
16 accepted as true, to state a claim to relief that is plausible on its face.” Cook v.
17 Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011) (quoting Ashcroft v. Iqbal, 556 U.S. 662,
18 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)). A claim is facially plausible when it
19 “allows the court to draw the reasonable inference that the defendant is liable for the
20 misconduct alleged.” Id. The complaint “must contain sufficient allegations of
21 underlying facts to give fair notice and to enable the opposing party to defend itself
22 effectively.” Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

23 “A document filed pro se is ‘to be liberally construed,’ and a ‘pro se complaint,
24 however inartfully pleaded, must be held to less stringent standards than formal
25 pleadings drafted by lawyers.” Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir. 2008).
26 However, liberal construction should only be afforded to “a plaintiff’s factual
27 allegations,” Neitzke v. Williams, 490 U.S. 319, 330 n.9, 109 S. Ct. 1827, 104 L. Ed. 2d
28 339 (1989), and the Court need not accept as true “unreasonable inferences or assume

1 the truth of legal conclusions cast in the form of factual allegations,” Ileto v. Glock
2 Inc., 349 F.3d 1191, 1200 (9th Cir. 2003).

3 If the court finds the complaint should be dismissed for failure to state a claim,
4 the court has discretion to dismiss with or without leave to amend. Lopez v. Smith,
5 203 F.3d 1122, 1126-30 (9th Cir. 2000). Leave to amend should be granted if it
6 appears possible the defects in the complaint could be corrected, especially if the
7 plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103, 1106
8 (9th Cir. 1995). However, if, after careful consideration, it is clear a complaint cannot
9 be cured by amendment, the court may dismiss without leave to amend. Cato, 70
10 F.3d at 1107-11; see also Moss v. U.S. Secret Serv., 572 F.3d 962, 972 (9th Cir. 2009).

11 IV.

12 DISCUSSION

13 A. THE COMPLAINT VIOLATES RULE 8 BECAUSE IT DOES NOT 14 CONTAIN A DEMAND FOR RELIEF

15 1. Applicable Law

16 Under Federal Rule of Civil Procedure 8 (“Rule 8”), a complaint must contain a
17 “short and plain statement of the claim showing the pleader is entitled to relief,” and
18 “[e]ach allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(a), (d).
19 “[T]he ‘short and plain statement’ must provide the defendant with ‘fair notice of
20 what the plaintiff’s claim is and the grounds upon which it rests.’” Dura Pharms., Inc.
21 v. Broudo, 544 U.S. 336, 346, 125 S. Ct. 1627, 161 L. Ed. 2d 577 (2005). Moreover, a
22 complaint must contain “a demand for relief sought which may include relief in the
23 alternative or different types of relief.” Fed. R. Civ. P. 8(a)(3). Accordingly, a court
24 may dismiss the complaint if it violates Rule 8. Knapp v. Hogan, 738 F.3d 1106, 1109
25 (9th Cir. 2013).

26 2. Analysis

27 Here, the Complaint fails to contain “a demand for relief sought”. Thus, the
28 Complaint is subject to dismissal under Rule 8. See Knapp, 738 F.3d at 1109.

B. THE COMPLAINT VIOLATES RULE 11 BECAUSE IT DOES NOT INCLUDE A SIGNATURE

1. Applicable Law

Under Federal Rule of Civil Procedure 11 (“Rule 11”), a complaint must “be signed by at least one attorney of record . . . or by a party personally if the party is unrepresented.” Fed. R. Civ. P. 11(a). Accordingly, a court may dismiss the complaint “based on a party’s . . . failure to comply with federal or local rules of civil procedure.” Ghazali v. Moran, 26 F.3d 52, 53-54 (9th Cir. 1995).

2. Analysis

Here, it appears the Complaint is missing a signature page. Thus, the Complaint is subject to dismissal under Rule 11. See Ghazali, 26 F.3d at 53-54.

C. THE COMPLAINT FAILS TO STATE A CLAIM AGAINST DEFENDANTS IN THEIR OFFICIAL CAPACITY

1. Applicable Law

A municipality can be liable under Section 1983 “when execution of a government’s policy or custom” inflicts a constitutional injury. Monell v. Dep’t of Soc. Servs. of City of N.Y., 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). An “official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.” Kentucky v. Graham, 473 U.S. 159, 166, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985); see also Brandon v. Holt, 469 U.S. 464, 471-72, 105 S. Ct. 873, 83 L. Ed. 2d 878 (1985); Larez v. City of L.A., 946 F.2d 630, 646 (9th Cir. 1991). Such a suit “is not a suit against the official personally, for the real party in interest is the entity.” Graham, 473 U.S. at 166.

To state a cognizable Section 1983 claim against a municipality or local government officer in his or her official capacity, a plaintiff must show the alleged constitutional violation was committed “pursuant to a formal governmental policy or a longstanding practice or custom which constitutes the “standard operating procedure” of the local governmental entity.” Gillette v. Delmore, 979 F.2d 1342,

1 1346 (9th Cir. 1992). Proof of random acts or isolated events is insufficient to
2 establish a custom or practice. Thompson v. City of L.A., 885 F.2d 1439, 1444 (9th
3 Cir. 1989). Rather, a plaintiff must prove widespread, systematic constitutional
4 violations which have become the force of law. Board of Cty. Comm’rs of Bryan Cty.
5 v. Brown, 520 U.S. 397, 404, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997). In addition, a
6 plaintiff must show the policy, practice or custom was “(1) the cause in fact and (2)
7 the proximate cause of the constitutional deprivation.” Trevino v. Gates, 99 F.3d
8 911, 918 (9th Cir. 1996).

9 **2. Analysis**

10 Here, Plaintiff fails to state a Section 1983 claim against Defendants in their
11 official capacity because Plaintiff does not allege facts showing Defendants had a
12 “policy or custom” that was the “moving force” behind any constitutional violation.
13 Graham, 473 U.S. at 166. In fact, Plaintiff appears to allege a “random act[] or [an]
14 isolated event[]” in which Defendants, while treating Plaintiff, acted deliberately
15 indifferent, were grossly negligent, performed medical malpractice, and committed
16 fraud. See Thompson, 885 F.2d at 1444. Ultimately, Plaintiff fails to allege any
17 widespread, systematic constitutional violations that have become the force of law or
18 formal governmental policy pursuant to which Defendants acted. See Brown, 520
19 U.S. at 404; Gillette, 979 F.2d at 1346. Accordingly, Plaintiff’s Section 1983 claim
20 against Defendants in their official capacity is subject to dismissal.

21 **V.**

22 **LEAVE TO FILE A FIRST AMENDED COMPLAINT**

23 For the foregoing reasons, the Complaint is subject to dismissal. As the Court
24 is unable to determine whether amendment would be futile, leave to amend is granted.
25 See Lucas v. Dep’t of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam).

26 Accordingly, IT IS ORDERED THAT **within twenty-one (21) days** of the
27 service date of this Order, Plaintiff choose one of the following two options:
28

1 1. Plaintiff may file a signed First Amended Complaint to attempt to cure
2 the deficiencies discussed above. **The Clerk of Court is directed to mail Plaintiff a**
3 **blank Central District civil rights complaint form to use for filing the First**
4 **Amended Complaint, which the Court encourages Plaintiff to use.**

5 If Plaintiff chooses to file a First Amended Complaint, Plaintiff must clearly
6 designate on the face of the document that it is the “First Amended Complaint,” it
7 must bear the docket number assigned to this case, and it must be retyped or
8 rewritten in its entirety, preferably on the court-approved form. Plaintiff shall not
9 include new defendants or new allegations that are not reasonably related to the
10 claims asserted in the Complaint. In addition, the First Amended Complaint must be
11 complete without reference to the Complaint or any other pleading, attachment, or
12 document.

13 An amended complaint supersedes the preceding complaint. Ferdik v.
14 Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). After amendment, the Court will treat
15 all preceding complaints as nonexistent. Id. **Because the Court grants Plaintiff**
16 **leave to amend as to all his claims raised here, any claim raised in a preceding**
17 **complaint is waived if it is not raised again in the First Amended Complaint.**
18 Lacey v. Maricopa Cty., 693 F.3d 896, 928 (9th Cir. 2012).

19 The Court advises Plaintiff that it generally will not be well-disposed toward
20 another dismissal with leave to amend if Plaintiff files a First Amended Complaint
21 that continues to include claims on which relief cannot be granted. “[A] district
22 court’s discretion over amendments is especially broad ‘where the court has already
23 given a plaintiff one or more opportunities to amend his complaint.’” Ismail v. Cty.
24 of Orange, 917 F. Supp. 2d 1060, 1066 (C.D. Cal. 2012); see also Ferdik, 963 F.2d at
25 1261. Thus, **if Plaintiff files a First Amended Complaint with claims on which**
26 **relief cannot be granted, the First Amended Complaint will be dismissed**
27 **without leave to amend and with prejudice.**
28

1 2. Alternatively, Plaintiff may voluntarily dismiss the action without
2 prejudice, pursuant to Federal Rule of Civil Procedure 41(a). **The Clerk of Court is**
3 **directed to mail Plaintiff a blank Notice of Dismissal Form, which the Court**
4 **encourages Plaintiff to use.**

5 Plaintiff is explicitly cautioned that failure to timely file a First Amended
6 Complaint will result in this action being dismissed with prejudice for failure
7 to state a claim, or for failure to prosecute and/or obey Court orders pursuant
8 to Federal Rule of Civil Procedure 41(b).

9
10 Dated: September 14, 2018



HONORABLE KENLY KIYA KATO
United States Magistrate Judge